

NATIONS UNIES
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UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

IRAQ (26)

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23 June 1998

Dear Mr. Walker,

I would like to thank you for your letter of 22 May 1998 requesting UNHCR's advice on the possibilities for protection in northern Iraq, especially concerning the availability of internal flight alternative and the feasibility of return of rejected asylum-seekers. I should also like to take this opportunity to express once again our appreciation for the open and constructive dialogue the United Kingdom Presidency of the European Union has had with UNHCR.

The EU Action Plan on "the influx of migrants from Iraq and the neighbouring region" is but one important area where the European Union and UNHCR have actively engaged in useful co-operation under your Government's EU Presidency. UNHCR's concerns and recommendations with regard to the movements of Iraqi asylum-seekers, refugees and migrants which prompted the EU Action Plan were presented in the document forwarded to you on 16 April 1998. The paper outlined, *inter alia*, the views of the Office concerning internal flight alternative in Iraq and the return of Iraqi asylum-seekers who have been found through fair and efficient procedures not to be in need of international protection. The position set out in the paper on these two questions is summarised below.

1. Internal Flight Alternative

- 1.1. There is no internal flight alternative in Iraqi Government-controlled territory for refugees from this part of Iraq.
- 1.2. In northern Iraq, UNHCR now considers that the gradual improvements over past months in the situation there have acquired a sufficiently stable character as to permit a limited internal flight alternative for some asylum-seekers from northern Iraq.

Mr. Timothy Walker
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1.3. For persons emanating from Government-controlled territory who have fled through northern Iraq, the circumstances surrounding the case might indicate that the claimant could reasonably have sought protection in the Kurdish-controlled area rather than in another country, i.e. the concept of internal flight alternative may be applied. The basic factors to be considered are whether the claimant has family, community and/or political links in the north that would normally provide the possibility for a smoother integration within the boundaries of his own country. If a person had resided for a considerable length of time in northern Iraq without any protection problems, the person would be deemed to have been integrated in the local community. As a result, Turkomans, Kurds and Christians will frequently be considered to have an internal flight alternative in northern Iraq.

1.4. Persons with a high political or military profile, even with relatives or community links in northern Iraq, should not be considered to have an internal flight alternative because of the risks they may be exposed to of persecution or ill-treatment by the factions or Iraqi Government agents operating in the area.

1.5. In northern Iraq, KDP and PUK members or sympathisers might be considered to have access to protection in the area controlled by their party, but could be at risk while residing in the area controlled by the other party. For example, active PUK military personnel, security forces (Asayish) and others who have held high positions or decision-making posts within the PUK administration or police could be targeted if identified by the KDP. Conversely, similar categories of KDP people could find themselves in the same situation when residing or crossing the PUK controlled area.

1.6. Persons originating from the part of northern Iraq under the control of the Government of Iraq who have sought asylum abroad and are found to have a valid fear of persecution vis-a-vis the central government in Baghdad, but have nothing to fear from the Kurdish authorities in the north, can be considered to have an internal flight alternative in northern Iraq and, therefore, will not normally be in need of international protection. This is generally applicable to Kurds, Christians and Turkomans.

1.7. Opponents of the Government of Iraq, including members of the Iraqi National Congress (INC), who have a valid fear of persecution vis-a-vis the Government as well as the Kurdish authorities in the north, cannot be considered to have an internal flight alternative in the north.

2. Return of Rejected Asylum-seekers

2.1. UNHCR's policy is that asylum-seekers who are properly rejected through fair and efficient procedures which employ the criteria appropriately can, in principle, be returned to their country of origin. In practice, this may become difficult where the country of origin raises obstacles. More important are concerns which would accompany any returns which are carried out in such a manner as to provoke a particular negative focus on the affected individuals by the national authorities.

2.2. UNHCR urges extreme caution in returning rejected asylum-seekers to Iraqi Government-controlled territory, taking into account the record of the Iraqi Government on human rights protection and the unpredictability of its reactions. Also, the possibility cannot be overlooked that the return itself could put Iraqis in danger of treatment contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2.3. UNHCR now considers that the gradual improvements over past months in the situation in northern Iraq have acquired a sufficiently stable character to mitigate the Office's strong concerns over the return of rejected cases. Therefore, UNHCR would not object to the return to their places of origin in northern Iraq of asylum-seekers originating therefrom and who have been found through fair and efficient procedures not to be in need of international protection.

2.4. In the case of asylum-seekers originating from the Iraqi Government-controlled areas and who have family, community and/or political links in northern Iraq that would normally provide the possibility for a smooth integration, UNHCR would not object to their return to northern Iraq providing they have been found through acceptable and reliable refugee status determination procedures not to be in need of international protection.

The above summarises UNHCR's positions on internal flight alternative and return of rejected asylum-seekers. We would like to stress that the views set out here, as in the document of 16 April 1998, are in relation to the EU Action Plan and, therefore, ~~are not meant to be shared~~ brought to the attention of national refugee status determination bodies in EU Member States for use as general background information, on the understanding that it is not for citation. At the same time, UNHCR hopes that the Office's other concerns and recommendations as set out in the document of 16 April 1998 would be taken into account by Governments given the need for a comprehensive approach to mitigate the effects of spontaneous and uneven movements of Iraqi asylum-seekers across Europe.

UNHCR considers that the situation in Iraq, including northern Iraq, is volatile and may change at any time. Any serious deterioration of the situation will be an important factor in the assessment of the need for international protection and may lead UNHCR to reconsider its positions on the possibility of an internal flight alternative and on the feasibility of return of screened out asylum-seekers.

I hope you find the above useful.

Yours sincerely,

Karola Paul
Deputy Director
Bureau for Europe

